

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL HALLMARK,

No. 11-cv-0842(WMS)(LGF)

Plaintiff,

v.

COHEN & SLAMOWITZ, LLP,  
and MIDLAND FUNDING LLC d/b/a  
MIDLAND FUNDING OF DELAWARE LLC

Defendants.

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**Reply Declaration of Plaintiff's Attorney, Brian L. Bromberg in Further Support of  
Motion to Strike the Reply Affidavit of Kyle Hannan, the  
Reply Declaration of Daniel R. Ryan, the Exhibits to those Documents, and any  
Portions of Defendants' Reply Memorandums that Refer to the  
Hannan Affidavit or the Ryan Declaration**

Under 28 U.S.C. § 1746, I, Michael N. Litrownik, do hereby declare under penalty of perjury, that the following is true and correct:

1. I am an attorney at Bromberg Law Office, P.C.
2. I am submitting this Declaration in further support of Plaintiff Michael Hallmark's motion to strike the Reply Affidavit of Kyle Hanna (ECF #70-1), the Declaration of Daniel R. Ryan, Esq. in Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss (ECF #69), and the exhibits to those documents (ECF #s 69-1, 69-2, and 70-1).

3. I am attaching as Exhibit A to this Declaration a true and correct copy of the homepage of the Orchard Bank website, which I printed out this day from [www.orchardbank.com](http://www.orchardbank.com).

4. I am attaching as Exhibit B to this Declaration a true and correct copy of the article entitled “Capital One to Buy HSBC’s U.S. Card Unit,” *Wall Street Journal*, August 10, 2011, which I printed out this day from <http://online.wsj.com/article/SB10001424053111904480904576499313251083894.html>.

5. I am attaching as Exhibit C to this Declaration a true and correct copy of the article entitled “Capital One to Buy HSBC’s U.S. Card Unit for \$2.6 Billion,” *New York Times*, August 10, 2011, which I printed out this day from <http://dealbook.nytimes.com/2011/08/10/capital-one-to-buy-hsbcs-u-s-card-unit-for-2-6-billion/>.

6. I am attaching as Exhibit D to this Declaration a true and correct copy of the “Compare credit cards” page on HSBC’s website, which I printed out this day from <http://www.us.hsbc.com/1/2/home/personal-banking/credit-cards>.

Dated: New York, New York  
June 7, 2013

/s/ Brian L. Bromberg  
Brian L. Bromberg

# Exhibit A

**Cardmember Benefits**

Text Size

**Secure Login**

First time user?

[Register](#)**Login ID****Password**[Online Account Benefits](#)**Welcome Orchard Bank customers!**

We're excited to have Orchard Bank credit card customers join Capital One. We're committed to ensuring a smooth transition and keeping you up to date with everything you need to know. If you can't find your answer on our [FAQs page](#), please call the number on the back of your card or the toll-free number on your statement.

**Online Account Benefits****Go Paperless!**

Go green with paperless statements. Your online statements are just like your printed ones-except you get them faster and more securely. And, by choosing paperless, you opt for a greener way of life.

[Tell me more](#)**Everyday Special Offers**

Take advantage of helpful financial products and services for your home, auto and family.

[Visit Offer Central](#)**Online Bill Pay Service**

Schedule monthly or [setup recurring payments](#) with up to three bank accounts - no checks, no stamps, no worries.

[Learn More](#)**Application Process****Our application process is both secure and simple!**

We take the confidentiality of your personal information seriously. We use 128-Bit Secure Socket layer (SSL) technology to encrypt your personal information during your application.

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[Reply Now](#)**News & Updates****What to Expect at Capital One®**

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# Capital One to Buy HSBC's U.S. Card Unit

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By MATTHIAS RIEKER

[Capital One Financial Corp.](#) COF +2.57% said it would buy the U.S. credit-card business of [HSBC Holdings](#) HBC +0.31% PLC for about \$2.6 billion.

[Capital One](#) COF +2.57% said it may raise up to \$1.25 billion in equity for the deal, which will help the McLean, Va., bank expand its lending at a time when consumers remain reluctant to take out new loans.

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[Earlier: Deal Near on Sale of HSBC Card Unit](#)  
[Deal Journal: One Deal Leads to Another](#)

The deal includes about \$30 billion of credit-card loans, prime and subprime as well as so-called private-label credit cards that banks issue in the name of

others, including retailers.

Capital One would become the third-largest issuer of private-label credit cards; it ranks sixth now and [General Electric Co.](#) GE +2.05% is No. 1. Once the deal closes, Capital One would issue credit cards for [General Motors Co.](#), GM +1.71% the AFL-CIO, [Saks Inc.](#), SKS +1.23% Neiman Marcus Inc. and Best Buy Co., among others.

Capital One would remain the fourth-largest U.S. credit-card issuer; [J.P. Morgan Chase](#) JPM +1.44% & Co. is No. 1.

For HSBC, based in London, the sale would be yet another step to rid itself of businesses that no longer fit with its narrower banking focus following the financial crisis, and end its foray into consumer and subprime lending in the U.S.

Capital One shares rose 28 cents, or 0.69% to \$41.05; HSBC's American depositary shares slid 7.57% to \$41.52.

Capital One said it expects to pay cash but has an option to pay HSBC \$750 million in stock, at a per-share value of \$39.23, in the event markets remain choppy and it wants to raise less equity.

The deal is expected to close in the second quarter of next year, and add to Capital One's earnings in 2013.

[J.P. Morgan Chase](#) JPM +1.44% advised HSBC; [Morgan Stanley](#), MS +6.26% Centerview Partners LLC and Kessler Group advised Capital One.



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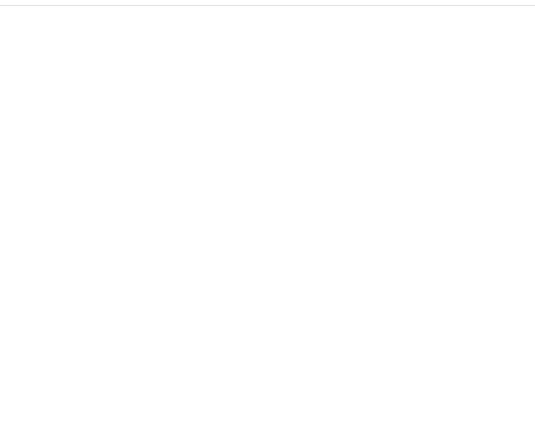


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# Exhibit C

AUGUST 10, 2011, 1:29 AM

## Capital One to Buy HSBC's U.S. Card Unit for \$2.6 Billion

By *MICHAEL J. DE LA MERCED*

Capital One Financial agreed early Wednesday to buy the United States credit card business of HSBC Holdings for \$2.6 billion in cash and stock, in what will be Capital One's second major deal with a European firm in recent months.

The purchase will give Capital One more than \$30 billion of credit card loans. It follows the firm's agreement in June to buy the American online banking operations of ING Group of the Netherlands for \$9 billion.

Capital One said it expected to realize cost savings of about \$350 million and incur restructuring costs of about \$420 million.

HSBC said that the sale represented a premium of 8.75 percent to the gross customer loan balances and that it would record a post-tax gain of \$2.4 billion. The bank, based in London, also said that it would keep its \$1.1 billion HSBC USA credit card program and that it would continue to offer credit cards to American customers.

However, the deal will allow HSBC to continue paring back its consumer businesses in the United States as it refocuses on emerging markets and international corporate lending.

HSBC had already announced that it was considering shedding noncore consumer operations and assets as part of a \$3.5 billion cost-trimming effort. Last week, the British bank announced plans to lay off 30,000 employees.

It also said that it was selling 195 bank branches, mostly in upstate New York, to the First Niagara Financial Group for about \$1 billion.

While the auction of the HSBC card business had attracted other potential suitors, like Wells Fargo, bankers considered Capital One the most likely buyer. Capital On, a 23-year-old firm, began life as a credit card lender, and it remains one of the biggest purveyors of such services to customers with less-than-ideal borrowing histories.

Capital One's takeover of the ING banking operations was meant in part to bolster mainline banking operations. But the deal also furnished the firm with more deposits that it could use as a source of funds for lucrative acquisitions.

Analysts at Barclays Capital wrote in a research note published after the ING deal that if the firm were to buy the HSBC portfolio, it could raise its earnings per share by 10 percent or more.

Capital One has already benefited from an improving environment for credit card lenders,

including fewer charge-offs and lower financing costs. Its card unit more than doubled its profit last year, to \$2.3 billion.

HSBC was advised by [JPMorgan Chase](#).

[Morgan Stanley](#), Centerview Partners and the Kessler Group were advising Capital One. Wachtell, Lipton, Rosen and Katz, and Morrison & Foerster acted as legal advisers.

# Exhibit D



## Compare credit cards

### Compare Credit Cards

**HSBC Premier  
World  
MasterCard®<sup>1</sup>**

**HSBC  
Platinum  
MasterCard®  
with  
Cash or Fly  
Rewards<sup>6</sup>**

**HSBC  
Platinum  
MasterCard®<sup>7</sup>**

<b>For those who need:</b>	A card with a rich Rewards Program including a variety of travel benefits tailored to the HSBC Premier client needs <sup>2</sup> .	A card with a Rewards Program earning points on every purchase with no earnings cap or Point expirations. The flexibility to choose travel or cash back rewards.	A card with a competitive APR on both purchases and balance transfers.
<b>Eligibility</b>	Exclusively for HSBC Premier clients <sup>1</sup> . Existing HSBC Premier client? <a href="#">Log on to apply</a>  To learn more call customer service at 888.662.4722 for more information.	Available to HSBC Customers.  <a href="#">Log on to apply</a>	Available to HSBC Customers.  <a href="#">Log on to Personal Internet Banking to apply</a>
<b>Foreign Transaction Fees</b>	No foreign transaction fees <sup>3</sup> on card purchases made in a foreign currency.	No foreign transaction fees <sup>6</sup> on card purchases made in a foreign currency.	No foreign transaction fees <sup>7</sup> on card purchases made in a foreign currency.
<b>APR</b>	12.99% <sup>3</sup> APR on purchases and balance transfers.	0% <sup>6</sup> Introductory APR on credit card purchases and balance transfers for 12 months from account opening ("Introductory Period").  After that, a variable APR of 12.99%, 16.99% or 22.99% <sup>6</sup> will apply.	0% <sup>7</sup> Introductory APR on credit card purchases and balance transfers for 15 months from account opening ("Introductory Period").  After that, a variable APR of 12.99%, 16.99% or 22.99% <sup>7</sup> will apply.
<b>Exclusive Rewards</b>	New Premier World MasterCard customers will earn 25,000 Bonus Rewards Program Points <sup>4</sup> after spending \$1,500 in new, net card purchases in the first three months from Account Opening. And after that, earn 1 Point for every new, net dollar in credit card purchases, with no Points expiration or earnings cap.	New HSBC Platinum MasterCard with Cash or Fly Rewards customers can earn double Reward Points on all purchases for the first six months from the account open date. Afterwards, you will earn one point for every new, net dollar in credit card purchases, with no Points expiration or earnings cap.	-



Choose Rewards that suit your lifestyle, including cash back, redeeming points for credits toward airline tickets with participating airline partners, vacation packages, gift cards, and more. Fly anywhere, anytime on most major airlines with no blackout dates or seat restrictions.

Redeem for 1% cash back or travel credits with as little as 7,500 Points on almost any major airline, with no blackout dates or seat restrictions.

<b>Spending Limit</b>	No pre-set spending limit <sup>5</sup>	Limits vary	Limits vary
<b>MasterRental<sup>®</sup> Insurance Coverage<sup>8</sup></b>	Yes	Yes	Yes
<b>MasterAssist - Travel Assistance Services<sup>8</sup></b>	Yes	Yes	Yes
<b>24-hour toll-free assistance with lost or stolen cards, emergency card replacement and emergency cash advances<sup>8</sup></b>	Yes	Yes	Yes
<b>Next Day Replacement Card</b>	Yes	No	No
<b>Concierge Services<sup>9</sup></b>	Yes	No	No

<sup>1</sup> HSBC Premier World MasterCard requires an HSBC relationship and is subject to credit approval. To qualify for an HSBC Premier relationship, you need to open an HSBC Premier checking account and maintain \$100,000 in combined U.S. personal deposit and investment balances. Business owners may use their commercial balances to qualify for personal HSBC Premier Relationship. A monthly maintenance fee of \$50 will be incurred if minimum balance requirements are not maintained.

<sup>2</sup> HSBC Premier Rewards Program Rules will be supplied to all new cardmembers following the receipt of their card.

<sup>3</sup> Premier World MasterCard: The information about the costs and benefits of the card described is accurate as of 06/07/2013. The variable Purchase APR applies to credit card purchases and is 12.99%. The variable Balance Transfer APR applies to balance transfers and credit card checks and is 12.99%. The variable Cash APR applies to cash advances and overdrafts and is 24.99%. Your APRs may increase to the variable Penalty APR of 29.99% if you fail to make a minimum payment to us when due. These APRs will vary with the market based on the Prime Rate. For each billing cycle, variable APRs are calculated by adding a specified amount ("Spread") to the U.S. Prime Rate published in the Money Rates table of *The Wall Street Journal* that is in effect on the last day of the month ("Prime Rate"). If the Prime Rate changes, the new APRs will take effect on the first day of your billing cycle beginning in the next month. The Minimum Interest Charge is \$0.50. A Cash Advance Fee of either \$5 or 3%, whichever is greater, maximum \$50 fee, will apply on each cash advance transaction. A Balance Transfer Fee of either \$5 or 3%, whichever is greater, maximum \$50 fee, will apply on each balance transfer and credit card check. There is no Annual Fee, Overdraft Transaction Fee, or Foreign Transaction Fee.

**We may change the terms on your Account. This may include changing, adding, or removing terms. We may do this in response to the legal, business, competitive environment or other reasons not listed here. We may increase the interest rate on existing balances in limited circumstances. Changes to some terms may require at least 45 days advance notice, and we will tell you in the notice if you have the right to reject a change. We**

**cannot change certain terms during the first year of your Account.**

<sup>4</sup> The 25,000 Bonus Rewards Program Points ("Bonus Points") offer applies to new, net retail purchases using your HSBC Premier World MasterCard® when you charge the qualifying amount or more, within the first three (3) months from Account opening ("Promotional Period"). The 25,000 Bonus Points offer does not apply to balance transfers, credit card checks, cash advances or overdrafts. Allow 4-6 weeks after the Promotional Period has ended for the Bonus Points to post to your Account.

<sup>5</sup> No pre-set spending limit: This does not mean that all charges will be approved. Each time you make a charge, we will evaluate it for approval including charges in excess of your Revolving Credit Line. You must pay the amount that exceeds your Revolving Credit Line by your next payment due date.

<sup>6</sup> HSBC Platinum MasterCard® with Cash or Fly Rewards: The information about the costs and benefits of the card described is accurate as of 06/07/2013. The 0% Introductory APR does not apply to cash advances and overdrafts. After the Introductory Period, a variable Purchase APR of 12.99%, 16.99% or 22.99%, depending on your creditworthiness, will apply to credit card purchases. After the Introductory Period, a variable Balance Transfer APR of 12.99%, 16.99% or 22.99%, depending on your creditworthiness, will apply to balance transfers and credit card checks. The variable Cash APR applies to cash advances and overdrafts and is 24.99%. Your APRs may increase to the variable Penalty APR of 29.99% if you fail to make a minimum payment to us when due. These APRs will vary with the market based on the Prime Rate. For each billing cycle, variable APRs are calculated by adding a specified amount ("Spread") to the U.S. prime rate published in the Money Rates table of *The Wall Street Journal* that is in effect on the last day of the month ("Prime Rate"). If the Prime Rate changes, the new APRs will take effect on the first day of your billing cycle beginning in the next month. The Minimum Interest Charge is \$1.00. A Cash Advance Fee of either \$10 or 4%, whichever is greater, will apply on each cash advance transaction. A Balance Transfer Fee of either \$10 or 4%, whichever is greater, will apply on each balance transfer and credit card check. An Overdraft Transaction Fee of \$5 or 3%, whichever is greater, will apply on the overdraft amount, if applicable. There is no Annual Fee or Foreign Transaction Fee.

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<sup>7</sup> HSBC Platinum MasterCard®: The information about the costs and benefits of the card described is accurate as of 06/07/2013. The 0% Introductory APR does not apply to cash advances and overdrafts. After the Introductory Period, a variable Purchase APR of 12.99%, 16.99% or 22.99%, depending on your creditworthiness, will apply to credit card purchases. After the Introductory Period, a variable Balance Transfer APR of 12.99%, 16.99% or 22.99%, depending on your creditworthiness, will apply to balance transfers and credit card checks. The variable Cash APR applies to cash advances and overdrafts and is 24.99%. Your APRs may increase to the variable Penalty APR of 29.99% if you fail to make a minimum payment to us when due. These APRs will vary with the market based on the Prime Rate. For each billing cycle, variable APRs are calculated by adding a specified amount ("Spread") to the U.S. prime rate published in the Money Rates table of *The Wall Street Journal* that is in effect on the last day of the month ("Prime Rate"). If the Prime Rate changes, the new APRs will take effect on the first day of your billing cycle beginning in the next month. The Minimum Interest Charge is \$1.00. A Cash Advance Fee of either \$10 or 4%, whichever is greater, will apply on each cash advance transaction. A Balance Transfer Fee of either \$10 or 4%, whichever is greater, will apply on each balance transfer and credit card check. An Overdraft Transaction Fee of \$5 or 3%, whichever is greater, will apply on the overdraft amount, if applicable. There is no Annual Fee or Foreign Transaction Fee.

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<sup>8</sup> Certain restrictions, limits and exclusions apply. Benefits may not be offered in every state. Coverage may be underwritten and managed by companies that are not affiliated with MasterCard, or HSBC Bank. Full details will be sent when you become a cardmember.

<sup>9</sup> The World MasterCard<sup>®</sup> Concierge Service is provided by VIPdesk. Certain restrictions, limitations and exclusions may apply. This service is administered by a company not affiliated with HSBC Bank USA, N.A.

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